

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MICHAEL LEWIS,

Plaintiff,

-against-

COMM. ANNUCI, et al.,

Defendants.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10/22/2020

7:16-CV-9757 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff Michael Lewis commenced this *pro se* action against the Defendants asserting claims pursuant to 42 U.S.C. §1983. (ECF No. 2.) By Order to Show Cause (“OSC”), dated March 19, 2020, the Court directed Plaintiff to show cause on or before April 27, 2020, why the action should not be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) (“Rule 41(b)”). To date, Plaintiff has not responded.

A review of the docket reveals Plaintiff has taken little action to prosecute his claims since the action was commenced in December 2016. Moreover, despite the passage of more than seven months, Plaintiff has failed respond to the Court’s OSC. When determining whether to dismiss an action pursuant to Rule 41(b), courts have considered whether: (1) plaintiff’s failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff’s right to an opportunity for a day in court; and (5) the trial court adequately assessed the efficacy of lesser sanctions. *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004) (internal citations omitted). No one factor is determinative. *Id.* (citing *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993)). Having considered the relevant factors, the Court determines that dismissal of the action is warranted. Plaintiff’s delays have been significant in duration, Plaintiff has failed to communicate

with the Court since January 2019 (more than a year and a half ago), and Defendants have sought to defend against the claims asserted since the inception of the action. Accordingly, it is hereby Ordered that the action is DISMISSED without prejudice for failure to prosecute.

The Clerk of the Court is respectfully directed to terminate the motion at ECF No. 27 and the action, to serve a copy of this Order upon the Plaintiff at his last known residence, and to show proof on the docket.

Dated: October 22, 2020  
White Plains, New York

SO ORDERED:

A handwritten signature in dark ink, appearing to read 'Nelson S. Román', is written over a light blue rectangular background.

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NELSON S. ROMÁN  
United States District Judge